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January 4, 1993

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments of A.C. Nielsen Company
MM Docket No. 92-259

Dear Ms. Searcy:

Transmitted herewith on behalf of A.C. Nielsen Company are an original and four (4) copies of its Comments in MM Docket No. 92-259 regarding implementation of the must-carry and retransmission consent requirements imposed by the Cable Television Consumer Protection and Competition Act of 1992.

Should any questions arise with respect to this matter, kindly contact the undersigned.

Sincerely,


Grier C. Raclin

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Cable Television
Consumer Protection and Competition
Act of 1992

Broadcast Signal Carriage Issues

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MM Docket No. 92-259

TO: The Commission

COMMENTS OF A.C. NIELSEN COMPANY

Respectfully submitted,

A.C. NIELSEN COMPANY

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January 4, 1993

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SUMMARY

A. C. Nielsen Company is a ratings organization which provides a variety of rating services to members of the broadcast industry, including advertisers, networks, and local stations. The most commonly known of these services is its "national" ratings which are, in part, compiled from source identification ("SID") codes which are implanted on Line 20 of the vertical blanking interval ("VBI") and Line 22 of the active video.

The Cable Television Consumer Protection and Competition Act of 1992 contains three "manner-of-carriage" requirements which might significantly impact rating organizations such as Nielsen. These include requirements as to the content of broadcast signals carried by a cable operator, the signal quality of those signals, and a cable systems ability to delete or reposition broadcast signals.

When adopting rules to implement these manner-of-carriage requirements, it is important that the Commission consider the concerns of ratings organizations which use both the VBI and the active video signals of broadcast stations to carry SID codes in support of their ratings preparations. Absent such consideration, the public interest benefits realized by the utilization of SID codes and ratings are at risk.

Specifically, Nielsen urges the Commission to adopt regulations which require cable systems to retransmit, without degradation in quality, the SID codes which are

imbedded in the active lines and the VBI of broadcast programming carried by cable operators. In addition, the Commission should adopt rules which prohibit cable systems from deleting or repositioning broadcast station programming on their system during times when the respective stations are subject to ratings. Additionally, cable systems should be required to provide Nielsen and other ratings organizations with at least thirty (30) days notice prior to deleting that station's programming from, or repositioning the station's signal on, the cable system's line-up.

In order to effectuate Congressional intent to foster over-the-air broadcasting and protect the integrity of ratings which are important to the broadcast industry, these manner-of-carriage regulations should apply to all signals carried by cable systems, regardless of whether that carriage is pursuant to must-carry obligations, retransmission consents, or any other authority, and irrespective of whether the programming being retransmitted is commercial or noncommercial in nature.

Before the
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Washington, D.C. 20554

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To: The Commission

COMMENTS OF A.C. NIELSEN COMPANY

A.C. Nielsen Company ("Nielsen"), by its attorneys, hereby submits comments in the above-referenced proceeding as requested by the Commission in its Notice of Proposed Rule Making, FCC 92-499 (November 19, 1992) ("Notice"). Specifically, Nielsen urges the Commission to consider the impact of the proposed must-carry and retransmission consent rules on rating organizations such as Nielsen, and to adopt regulations:

- 1) Requiring cable systems to retransmit, without degradation, program source identification ("SID") codes that are embedded in the "active" lines and vertical blanking interval ("VBI") of either commercial or noncommercial broadcast programming that is carried either pursuant to "must carry" obligations or "retransmission consents"; and
- 2) Requiring cable systems to provide Nielsen and other recognized national ratings companies with at least thirty (30) days notice prior to implementing any changes (deletions or repositionings) of broadcasts programming on their system program line-ups, whether that carriage is pursuant to "must carry" obligations or "retransmission consents".

I. BACKGROUND

1. Nielsen provides a variety of "rating" services to members of the broadcast industry, including advertisers, networks, and local stations, both commercial and noncommercial. The most commonly known of these services is the "national" ratings, whereby Nielsen estimates the size and demographic composition of audiences viewing specific nationally-televised network, syndicated, and locally-produced programs.

Nielsen's national ratings are compiled from two principal sources of information: 1) "people meters" located in monitored homes, which note the stations to which television receivers are tuned at specific times and the demographic characteristics of the persons watching the television receivers during those times; and 2) its Automated Measurement of Line-ups ("AMOL") System, which identifies and analyzes the programs (i.e., the station's program line-up) that are being broadcast on those channels during the relevant times. Without either of these two elements, the preparation and compiling of ratings information would not be possible.

2. Through the use of the AMOL System, as authorized by the FCC, source identification ("SID") codes are implanted on Lines 20 or 22 of the signals transmitted with nationally-televised, commercial and noncommercial, network or syndicated programming. The codes identify, among other things, the program's originating source and the date and time of origination. Once implanted, the codes are then delivered with the program to the station and are read, either just prior to the broadcast of the programs or as they are broadcast, through special receivers located by Nielsen in the

communities and homes served by the respective stations. The reading of the AMOL Codes, together with the information regarding the programs furnished by the program suppliers and the people meters, provides Nielsen with the information necessary to prepare its national ratings.

3. The FCC has long-recognized that rating services provided by organizations such as Nielsen, and the transmission of SID codes in support of those services, are in the public interest because they are important to the broadcast industry. Permitting Transmission of Program-Related Signals in the Vertical Blanking Interval of the Standard Television Signal, 43 Fed. Reg. 49331, 49333 (Oct. 23, 1978), citing Report and Order in Docket 19314, 43 FCC 2d 927, 944 (1973). Specifically, the Commission has held that the use of program codes is "essential to [a network's] continued operation." Public Notice, FCC 70-387, 22 FCC 2d 779, 780 (1970). Such codes and the ratings produced therefrom are "important . . . to many entities involved in producing the programs which [a] station broadcasts, and without which its [a station's] viable operation, however convenient and economical, would be impossible." Coded Information in TV Broadcasts, 18 R.R.2d 1776, 1787 (1970).

II. IMPACT OF THE CABLE ACT UPON RATING ORGANIZATIONS

4. The Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act" or "Act"), and the rules proposed by the FCC to implement the Act, contain at least three "manner-of-carriage" requirements that might significantly impact rating

organizations. These include: (a) rules which impose requirements on the content of broadcast programming which a cable operator retransmits pursuant to must-carry obligations or the consent of the broadcast station being carried; (b) "signal quality" rules, which impose minimum requirements on the quality of carriage of those signals; (c) and rules limiting a system's ability to delete or reposition broadcast signals.

5. In implementing these requirements, the Commission must consider the concerns of rating organizations, which use both the primary video signal and VBI of broadcast stations to carry program SID codes in support of ratings preparation. Without proper consideration of these concerns, the public interest benefits realized by the utilization of SID codes and ratings in the broadcast industry would be at risk.

6. Accordingly, Nielsen strongly urges the Commission to adopt content requirements that would require cable operators to carry the program identification or SID codes contained in retransmitted television broadcast programming, whether commercial or noncommercial. Further, the Commission's technical rules regarding the quality of carriage should ensure that the program identification codes are carried without degradation in quality. Finally, in promulgating rules regarding the deletion of programming from, or repositioning of programming on, the system's line-up, the Commission should require cable systems to give Nielsen and other recognized ratings organizations at least thirty (30) days notice prior to implementing such changes. These requirements should apply to cable operators regardless of whether the relevant

broadcast programs are carried pursuant to "must-carry" requirements, retransmission consents granted by local stations, or some other authority.

A. MANNER OF CARRIAGE RESTRICTIONS

1. Content Requirements

7. Section 614(b)(3)(A) of the Act requires cable operators to carry, in its entirety, "the primary video, accompanying audio, and Line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers." 47 U.S.C. §614(b)(3)(A). Section 615(g)(1) of the Act includes the virtually the same requirements for carriage of local noncommercial television stations.^{1/} Pursuant to these requirements, cable systems must carry the "primary video" transmission of each local broadcast stations, as well as other "program related" material appearing in the station's VBI whenever that carriage is "technically feasible." As discussed in Section B, infra, these content requirements should apply regardless of

^{1/} The Commission has interpreted Section 615(g)(1) to include the same carriage requirements for noncommercial stations as commercial stations, except that noncommercial stations are also specifically required to carry program-related material "that may be necessary for receipt of programming by handicapped persons or for educational or language purposes." Notice at 17-18. Such a reading is consistent with one of the primary goals of the Act, to protect and promote over-the-air television broadcasting. As discussed earlier, carriage of identification codes and similar program-related material is essential to the existence of the television broadcast industry. This is true whether the codes are contained in programming provided by commercial or noncommercial stations. Thus, failure to require carriage of such codes in programs provided by noncommercial stations would, in contravention of the Act, severely harm over-the-air broadcast of noncommercial stations.

whether a cable system carries a broadcast signal pursuant to its must-carry obligations under Sections 614 and 615 of the Act, a retransmission consent obtained in accordance with Section 325(b) of the Act, or some other permission or approval.

a. SID Codes in the "Primary Video" Signal

8. As indicated above, some of Nielsen's AMOL Codes are embedded in "Line 22" of syndicated, nationally televised programs. As early as 1985, the Commission began authorizing use of this part of the active video signal for program identification purposes,^{2/} and authorized Nielsen's use of Line 22 for the transmission of AMOL Codes in 1989.^{3/} The Commission held that the transmission of SID signals on Line 22 qualifies as a "special signal" (signals related to broadcast operation but not intended for public use) which is beneficial and contributes to efficient broadcast operations. Telescan Authorization at 2; Nielsen Authorization at 1. In authorizing the use of such special signals, the Commission has repeatedly determined that the signals, and the ratings which they generate, are important to the broadcast industry and the public interest benefits realized therefrom. Coded Information in TV Broadcasts, 18 R.R.2d at 1787.

^{2/} Letter from James C. McKinney, Chief, Mass Media Bureau, Federal Communications Commission, to Burton Greenberg (July 18, 1985) (the "Telescan Authorization").

^{3/} Letter from Roy J. Stewart, Chief, Mass Media Bureau, Federal Communications Commission, to Grier C. Raclin (November 22, 1989) (the "Nielsen Authorization").

9. Line 22 is part of the "active" portion of the television video signal. See e.g., Telescan Authorization at 2; Amendment to the Rules Relating to Permissible Uses of the Vertical Blanking Interval of Broadcast Television Signals, Notice of Proposed Rule Making in MM Doc. No. 92-305, released December 31, 1992 (The "Line 21 NPRM") at ¶ 10. It is axiomatic, therefore, that the carriage of authorized material on that line, such as Nielsen's AMOL Codes, is mandated by the Act. Accordingly, regulations adopted by the Commission implementing this portion of the Cable Act should make it explicitly clear that cable systems are required to carry and retransmit program identification or SID codes, such as Nielsen's AMOL Codes that are embedded in the active video portion of broadcast signals.

b. SID Codes on Line 20 of the VBI

10. Section 73.682(a)(21) of the Commission's rules, clearly identifies Line 20 as part of the VBI and authorizes use of that line for program identification purposes. 47 C.F.R. §73.682 (a)(21) (1992). Thus, Nielsen's AMOL transmission on Line 20 is an authorized use of the VBI, and the Act mandates the carriage of Nielsen's SID codes on Line 20 so long as the information they carry is "program related" and their carriage is "technically feasible."

11. There can be no question but that AMOL and other SID codes are "program related." SID codes are unique for each program transmitted and are used to transmit, and allow ratings organizations to record, information required for the preparation of

ratings, which themselves are crucial to the broadcast and related industries.

Accordingly, the Commission has long-considered such identification codes to be program-related material. See, e.g., the TeleScan Authorization, where the Commission found that SID codes are "clearly related to the program material within which [they are] transmitted and to the operation of a television station's primary program service."

Telescan Authorization at 2.^{4/}

12. Further, carriage of AMOL Codes in Line 20 is "technically feasible." Nielsen proposes that carriage be deemed "technically feasible" when it can be accomplished without materially affecting the system's technical operations, requiring substantial changes to a system's infrastructure, or requiring significant investment by the system operator. For over a decade, broadcast stations have transmitted, and cable systems have retransmitted, AMOL Codes on Line 20 without a single instance known to Nielsen of technical complications arising to the systems from that carriage, and without requiring the expenditure of substantial funds by the cable systems. See e.g., Line 21 NPRM at ¶ 10. There could hardly be better evidence that the carriage of SID codes is "technically feasible," and thus the Commission should explicitly require cable systems to carry such program-related codes.

^{4/} See also Nielsen Authorization at 2 (SID codes are "part of broadcast operation."); Permitting Transmission of Program-Related Signals in the Vertical Blanking Interval of the Standard Television Signal, 43 Fed. Reg. 49331, 49333 (Oct. 23, 1978) (SID signals considered to be program-related).

2. Signal Quality Requirements

13. Sections 614(b)(4)(A) and 615(g)(2) of the Act require carriage of commercial and noncommercial broadcast stations, respectively, without material degradation. In implementing standards to ensure that these requirements are met, Nielsen urges the Commission to require carriage of the entire broadcast signal, including program identification or SID codes appearing in either the "primary video" or the VBI, without degradation. Such a requirement will help ensure the continued accuracy and effectiveness of SID codes.

14. As discussed in Section B below, and as was the case with the content requirements, signal quality requirements should apply irrespective of whether a broadcast program is being carried pursuant to must-carry obligations, retransmission consent, or some other authority. Regardless of why a program is being carried, the carriage of program identification or SID codes is important to the broadcasting industry.

3. Notification Regarding Deletion or Repositioning of Channels

15. Section 614(b)(9) of the Act requires cable operators to provide written notice to a commercial broadcast station thirty (30) days prior to the deletion of that station's programming from, or repositioning that station's programming on, the system's line-up. Section 615(g)(3) contains a similar restriction on the deletion or repositioning of noncommercial stations, except that cable systems must provide notification to both its

subscribers and the station being repositioned or deleted. In addition, Section 614(b)(9) seeks inter alia to protect the integrity of ratings by prohibiting the deletion of a commercial station's signal from, or repositioning of that signal on, the cable system's program line-up "during a period in which major television ratings services measure the size of audiences of local television stations." 47 U.S.C. § 614(B)(9); Report of the Committee on Energy and Commerce, H.R. Rep. No. 628, 102nd Congress, 2nd Sess., 95 (1992) ("House Report"); Report of the Senate Committee on Commerce, Science and Transportation, S. Rep. No. 92, 102nd Congress, 1st Sess., 86 (1991) ("Senate Report").

a. Implementation of the Notification Requirements

16. In its Notice, the Commission noted that, while Arbitron and Nielsen conduct nationwide ratings surveys of all television stations principally during four time periods (or "Sweeps") during the year, other ratings are prepared year-round and the Commission questioned whether limiting the Act's restriction on deletion and repositioning to the four quarterly Sweeps was "reasonable." Notice at 20, fn. 47. Nielsen also questions the adequacy of the Act's protection of the integrity of ratings.

17. For example, Nielsen, just as the broadcast stations themselves, requires notice of changes in cable system program line-ups to update the data-base upon which its ratings are based. The Act, however, requires only notice to the stations even though it requires various other steps that Congress understood to be required to protect the integrity of ratings. If the protection of ratings were the only concern to be addressed,

the Commission would prohibit adjustments to system line-ups involving stations that are subject to year-round ratings as well. However, Nielsen recognizes that the interest in protecting the integrity of ratings must be balanced against other interests, such as the cable systems' interests in being able to make appropriate adjustments in their line-ups when called for by market demand.

18. In order to balance these interests, Nielsen suggests that the Commission adopt regulations which require systems to give Nielsen and other recognized ratings organizations the same notice they already are required to give to broadcast stations: thirty (30) notice prior to implementing any changes in their line-ups. Such a requirement would be consistent with the Act's goal of protecting the integrity of ratings applicable to all stations, by allowing ratings organizations time to make any necessary adjustments resulting from deletion or repositioning of a signal, yet would permit cable systems to make changes in their program line-ups as called for by market demand.

19. As with the program content and signal quality requirements, Nielsen urges the Commission to require notice of deletion or repositioning of a broadcast signals from and on system line-ups, regardless of whether the station is carried pursuant to must-carry requirements, retransmission consents, or any other type of authorization. As discussed in Section B below, the need for such notices is the same, regardless of why or how a broadcast program is carried.

b. Applicability of Ratings Period Prohibition to Noncommercial Stations

20. Congress' purpose to protect the integrity of ratings should apply equally to changes or deletions in the line-up of commercial or noncommercial programming. There is no reason to discriminate against noncommercial stations by leaving their ratings subject to unique data collection risks. Indeed, the terms and legislative history of the Act reflect a specific Congressional intent to foster noncommercial over-the-air broadcasting, House Report at 69, and thus failure to apply this section of the Act to noncommercial stations would frustrate a key purpose of the Act. Moreover, because a portion of Nielsen's "ratings" are by their nature comparative among stations in a market, failure to adopt these requirements for the benefit of noncommercial broadcast stations might compromise ratings taken with respect to both commercial and noncommercial stations.

**B. APPLICABILITY OF MANNER OF CARRIAGE REQUIREMENTS
OUTSIDE OF "MUST-CARRY" OBLIGATIONS**

21. Section 325(b)(1) of the Act states that a cable system or other multichannel video program supplier cannot "retransmit the signal of a broadcast station, or any part thereof," except (1) with the authority of the originating station or (2) pursuant to the must-carry rights set forth in Section 614. 47 U.S.C. § 325(b)(1). The Act further seems to mandate that certain of the Act's "manner-of-carriage" requirements apply only to signals carried pursuant to the Act's "must carry" requirements; i.e., that they are not applicable to signals carried pursuant to "retransmission consent." For example, as the

Commission points out in Paragraph 56 of its Notice, the Act's provisions governing channel positions and signal availability are, by their terms, specifically limited to "signal[s] carried in fulfillment of the carriage obligations of a cable operator under this section [614]." 47 U.S.C. §§ 614(b)(6) and 614(b)(7).

22. The remaining provisions in Section 614 relating to manner of carriage are not so limited, however, and it is less clear whether other "manner-of-carriage" requirements, such as the content, quality and notice requirements discussed in these Comments, are applicable to signals carried pursuant to "must carry" obligations and "retransmission consents" alike. In implementing this section of the Act, the Commission tentatively concluded that the manner-of-carriage requirements outlined in Sections 614 and 615 of the Act should not be applicable to signals carried pursuant to retransmission consent, but Nielsen respectfully disagrees. While certain requirements are clearly stated in the Act or legislative history to be applicable only to "must carry" signals, those of concern to Nielsen are not appropriately included in such a category.

23. For guidance on this issue, the Commission must look to the legislative history, other provisions within the Act, and its own consideration of what should be required to accomplish the Act's implicit goal of protecting and promoting over-the-air broadcasting and the integrity of ratings. Nielsen respectfully suggests that consideration of these elements in implementing the three manner of carriage requirements addressed in these Comments -- the program content, signal quality, and notification requirements -

- must lead the Commission to apply the requirements to all signals carried by cable systems, regardless of whether those signals are carried pursuant to must-carry obligations, retransmission consent or some other authority.

24. Initially, while there is no clear edict requiring the applicability of these requirements to "consent-carried" signals, there likewise is no indication that requiring such carriage would violate the terms of the Act, unlike the provisions applicable to other manner-of-carriage requirements. For example, while Section 325(b)(3)(B) of the Act requires a broadcast station to make an election between "must" carriage under Sections 614 and 615 or "consent" carriage under Section 325, there is no indication in the Act or the legislative history, that, in making this election, Congress intended broadcasters to give up the content, signal quality, or notification protections set forth in Sections 614 and 615. Rather, the legislative history only indicates that a broadcaster "electing to exercise retransmission consent with respect to a particular cable system will thereby give up its rights to signal carriage and channel positioning." Senate Report at 37. Thus, neither the Act nor the legislative history indicates that Congress did not intend the content, signal quality, and notification requirements to apply equally to broadcast programs carried pursuant to must-carry obligations, retransmission consents, or any other type of authority.

25. Moreover, not applying these manner of carriage requirements to consent-carried signals would frustrate a fundamental purpose of the Act: to protect and promote


free over-the-air broadcasting. Senate Report at 36 ("the intent of S. 12 is to ensure that our system of free broadcasting remain [sic.] vibrant"); House Report at 27. As discussed above, carriage of the Nielsen's SID codes transmitted on Lines 20 and 22 are important to over-the-air television broadcasting. This is true regardless of whether the underlying programs are carried pursuant to regulatory requirement or voluntary actions. If cable systems are allowed to strip SID codes from broadcast programming that is carried pursuant to retransmission consent, the ratings of those programs may be adversely affected and the public interest benefits realized from the ratings might be at risk.

26. As the protection and promotion of free over-the-air broadcasting is one of the key purposes of the Act, it would be incongruous to assume that regulations within the Act needed to protect and promote the free broadcasting system were not applicable to carriage of all over-the-air broadcast signals, regardless of the reason for their carriage. Thus, Nielsen strongly urges the Commission to apply the content, quality and notice provisions discussed in these Comments to all signals carried by cable systems (at least insofar as necessary to require carriage of SID codes), regardless of whether that

carriage is pursuant to must-carry obligations, retransmission consents, or any other authority.

Respectfully submitted,

A.C. Nielsen Company

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